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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,713	06/23/2003	Kent Evans Felske	2898-0113	5752
6449 7590 05/18/2007 ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005				
			EXAMINER LEUNG, WAI LUN	
			ART UNIT 2613	PAPER NUMBER
			NOTIFICATION DATE 05/18/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary

Application No.

10/600,713

Applicant(s)

FELSKE ET AL.

Examiner

Danny Wai Lun Leung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6,7 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5 are rejected under 35 U.S.C. 102(a)&(e) as being anticipated by **Seto et al.** (*US006504636B1*).

Regarding claim 1, **Seto** teaches a transmitter for an optical network unit (ONU) (*10b, fig 15*) for transmitting data over a return data channel (*30, fig 15*) of a passive optical network, the transmitter comprising: a laser driver (*84, fig 15*) for driving a laser of the transmitter to generate an optical carrier (*col 21, ln 37-47*); a modulation sub-system (*12-1 ... 12-p, fig 15*) for modulating data onto the optical carrier generated by the laser (*col 21, ln 32-42*); and a secondary modulation sub-system (*16, fig 15*) for impressing an ONU identifier onto the optical carrier (*30, fig 15*), the ONU identifier serving to identify the ONU to a network monitor that monitors the return data channel (*col 21, ln 19-26*).

As to claim 2, **Seto** wherein the secondary modulation sub-system comprises: a tone source (*pilot carrier gen 14-1, 14-2, fig 15*) for supplying a tone that serves as the ONU identifier to a tone modulator (*16, fig 15*) to modulate the ONU identifier onto the optical carrier (*col 21, ln 39-42*).

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As to claim 3, **Seto** further teaches wherein the tone has a frequency that is well below (as shown in fig 23, f_{L02} is well below data modulation frequencies $f_{IF1...p}$) a data modulation frequency of the primary modulation subsystem (col 22, ln 37-45 stated that these frequencies are sufficiently separated).

As to claim 4, **Seto** further teaches wherein the tone has a frequency that is well above (as shown in fig 23, f_{L01} is well above data modulation frequencies $f_{IF1...p}$) a data modulation frequency of the primary modulation subsystem (col 22, ln 37-45 stated that these frequencies are sufficiently separated).

As to claim 5, **Seto** further teaches wherein the secondary modulation sub-system comprises: an ONU identifier source (14-1, 14-2, fig 15) for supplying the ONU identifier to the modulation sub-system (16, fig 15) to permit the ONU identifier to be modulated onto the optical carrier by the secondary modulation sub-system (col 21, ln 39-42).

Allowable Subject Matter

3. Claims 6, 7, and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. USC 112 rejections are hereby withdrawn in view of applicant's amendments to claims 1, 2, and 7.

5. Applicant's arguments filed 2/28/2007 have been fully considered but they are not persuasive.

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6. Applicant argues that the f_{LO} is the pilot carrier signal only and is not used for any means of identification related to the ONU itself. However, as illustrated in fig 16, each of the intermediate frequencies $f_{IF1} \dots f_{IFp}$ corresponds to, and identify a respective transmitting device 32B-1...32B-p in fig 15, wherein the carrier frequencies f_{LO2} and f_{LO1} correspond to transmitting station 10B, which identifies it as being the central station. It can be show more clearly in fig 25, where optical signals are being routed to transmitting station 10D, from transmitting devices 32D-1...32D-p, wherein f_{LO1} and f_{LO2} are being used to identify the transmitting station 10D apart from other transmitting stations 32D-1...32D-p (*col 32, ln 30-56*). Therefore, it is understood by a person of ordinary skill in the art, that carrier frequencies f_{LO1} and f_{LO2} are inherently being used to identify transmitting station 10 as being the central station, and that carrier frequencies f_{LO1} and f_{LO2} are functionally equivalent to that of identifier signals since it can be used to identify transmitting station 10 amongst the many transmitting stations 32s.

7. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., means for detecting transmission faults in an optical access network) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

8. Applicant is reminded that during patent examination, USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs.*,

Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted “in view of the specification” without importing limitations from the specification into the claims unnecessarily). *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320,1322 (Fed. Cir. 1989) (“During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.”). see **MPEP § 2106**

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danny Wai Lun Leung whose telephone number is (571) 272-5504. The examiner can normally be reached on 9:30am-9:00pm Mon-Thur.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DWL
May 7, 2007


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